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Specially appearing as counsel for FINNEGAN  
 HENDERSON FARABOW GARRETT &  
 DUNNER, LLP

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Attorneys for Defendant AMBU INC.

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

THE LARYNGEAL MASK COMPANY  
 LTD. and LMA NORTH AMERICA, INC.,

Plaintiffs,

v.

AMBU A/S, AMBU INC., AMBU LTD.,  
 AND AMBU SDN. BHD.,

Defendants.

No. 07 CV 1988 DMS (NLS)

DECLARATION OF SEAN M.  
 SELEGUE IN SUPPORT OF EX PARTE  
 APPLICATION FOR LEAVE TO  
 RESPOND TO MATTERS RAISED FOR  
 THE FIRST TIME ON REPLY

Judge: Hon. Dana M. Sabraw  
 Date: N/A  
 Time: N/A  
 Courtroom: 10

AND RELATED CROSS ACTIONS

1 I, Sean M. SeLegue, declare as follows:

2 1. I am a director of the law firm of Howard Rice Nemerovski Canady Falk &  
3 Rabkin. I submit this Declaration in support of the ex parte application of Finnegan  
4 Henderson Farabow Garrett & Dunner, LLP (“Finnegan”) to file responsive papers  
5 addressing matters raised for the first time in LMA’s reply papers. The statements made in  
6 this declaration are based on my personal knowledge unless otherwise indicated.

7 2. On December 6, 2007, LMA filed a declaration of Stephen Marzen in support of  
8 Plaintiffs’ motion to disqualify Finnegan. That declaration was just five pages long and had  
9 four exhibits attached.

10 3. On January 4, 2008, LMA filed a supplemental declaration of Stephen Marzen  
11 along with its reply papers. That declaration was about eleven pages long and had nine  
12 exhibits attached. Substantial portions of Mr. Marzen’s supplemental declaration have been  
13 redacted from the version that was publicly filed and served on Finnegan, and many of the  
14 exhibits have been reserved for in camera review.

15 4. On January 7, 2008, I sent Mr. Berretta—LMA’s counsel—a letter by facsimile  
16 indicating that Finnegan intended to object to the supplemental declaration. I also requested  
17 an unredacted copy. I offered to limit access to the unredacted material to Finnegan’s  
18 outside counsel (my firm), Finnegan’s in-house counsel, and the two attorneys who met with  
19 LMA and are not involved in the Ambu representation. A true and correct copy of my  
20 January 7, 2008 letter is attached hereto as Exhibit A.

21 5. On January 8, Mr. Berretta sent a letter by facsimile indicating that he had  
22 already submitted the unredacted materials to the Court for in camera review and that he did  
23 not intend to make the unredacted materials available to me or anyone involved in  
24 Finnegan’s opposition to the disqualification motion. A true and correct copy of Mr.  
25 Berretta’s letter is attached hereto as Exhibit B. (I was surprised that the unredacted version  
26 of the declaration had already been submitted to the Court, because footnote 1 of Mr.  
27 Marzen’s declaration suggests that he was requesting “permission to submit the complete  
28 unredacted declaration to Chambers . . .”)

W03 010808-169290002/Y07/1473366/F

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen (18) years and not a party to the within action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024; and that I served the below-named persons the following document:

1. DECLARATION OF SEAN M. SELEGUE IN SUPPORT OF EX PARTE APPLICATION FOR LEAVE TO RESPOND TO MATTERS RAISED FOR THE FIRST TIME ON REPLY

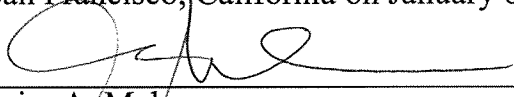
I served the document by transmitting the document via Notice of Electronic Filing through CM/ECF on the date of this declaration to those persons as indicated below:

The addresses are as follows:

Frederick S. Berretta, Esq.  
Knobbe Martens Olson & Bear  
550 West C Street, Suite 1200  
San Diego, CA 92101  
(619) 235-8550  
(619) 235-0176 (fax)  
fberretta@kmob.com

Vicki S. Veenker, Esq.  
Shearman & Sterling LLP  
1080 Marsh Road  
Menlo Park, CA 94025  
(650) 838-3600  
(650) 838-3699 (fax)  
vveenker@shearman.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on January 8, 2008.

  
\_\_\_\_\_  
Javier A. Melara  
Email: jmelara@howardrice.com

# **EXHIBIT A**

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN

*A Professional Corporation*

January 7, 2008

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Seventh Floor  
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Writer's Information:

Sean M. SeLegue  
[sselegue@howardrice.com](mailto:sselegue@howardrice.com)

**BY FACSIMILE**

Frederick S. Berretta, Esq.  
Knobbe Martens Olson & Bear LLP  
550 West C Street, Suite 1200  
San Diego, CA 92101

Re: *The Laryngeal Mask Company Ltd and LMA North America, Inc. v. Ambu A/S, Ambu Inc., Ambu Ltd., and Ambu Sdn Bhd.*, No. 07 cv 1988 DMS (S.D. Cal.)

Dear Mr. Berretta:

We have reviewed your reply papers and intend to file an objection to Mr. Marzen's supplemental declaration. We have not been served with an unredacted copy of that declaration, and I understand your papers to suggest that you will not provide us with an unredacted copy voluntarily. We believe that we, as Finnegan's outside counsel, along with Mr. Jakes, Mr. Williamson and Finnegan's in-house counsel Mr. Sunshine should be permitted to view the unredacted version. We will agree not to show the unredacted version to the attorneys at Finnegan now representing Ambu, in accordance with the ethical wall.

Please do not provide an unredacted version of the declaration to the Court until the Court has had an opportunity to review our objection. We intend to have the objection on file by tomorrow morning. Thank you.

Very truly yours,



Sean M. SeLegue

SMS/lmp

cc: Philip L. Sunshine, Esq.  
Gerald F. Ivey, Esq.  
Robert L. Burns, Esq.  
Bryan C. Diner, Esq.

# **EXHIBIT B**

01/08/2008 12:18 FAX

KNOB NPB.

001

**Knobbe Martens Olson & Bear LLP***Intellectual Property Law*

550 West C Street  
Suite 1200  
San Diego CA 92101  
Tel 619-235-8550  
Fax 619-235-0176  
www.kmob.com

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|--|---|
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TO: Sean M. SeLegue, Esq.  
FIRM: Howard Rice Nemerovski Canady Falk & Rabkin  
FACSIMILE NO.: 415.217-5910  
OUR REF.: LMANL.001L  
YOUR REF.: Civil Action No. 07 cv 1988 DMS (S.D. Cal)  
FROM: Frederick S. Berretta  
OPERATOR: C.Tolo NO. OF PAGES: 2 (incl. cover sheet)  
DATE: January 8, 2008 TIME: --

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# **Knobbe Martens Olson & Bear LLP**

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Frederick S. Berretta  
fberretta@kmob.com

January 8, 2008

**VIA FACSIMILE & FIRST CLASS MAIL**

Sean M. SeLegue, Esq.  
Howard Rice Nemerovski Canady Falk & Rabkin  
Three Embarcadero Center  
Seventh Floor  
San Francisco, CA 94111-4024

Re: *The Laryngeal Mask Company Ltd and LMA North America, Inc. v. Ambu A/S, Ambu, Inc., Ambu Ltd., and Ambu Sdn Bhd.,*  
Civil Action No. 07 cv 1988 DMS (S.D. Cal)  
Our Reference: LMANL.001L

Dear Mr. SeLegue:

This is in response to your letter to me of yesterday afternoon, January 7, 2007 regarding LMA's Motion to Disqualify Finnegan Henderson Farabow Garrett & Dunner, LLP ("Finnegan") in the above-referenced litigation.

Please note that the un-redacted *in camera* version of Stephen Marzen's Supplemental Declaration was submitted to the Court on Friday, January 4 as required by the briefing schedule on the Motion to Disqualify, and hence we filed (and served) the redacted version on the same day. Applicable legal authorities provide that this is the appropriate procedure in such cases, and we are not aware of any obligation to provide your firm or your clients with LMA's privileged information.

Very truly yours,



Frederick S. Berretta

cc: John L'Estrange, Esq.

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